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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 5th May 2009

No. 4137—li/1(B)-102/2005-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st March 2009 in Industrial Dispute Case No. 78/2005 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the management of Chilika Development Authority, Bhubaneswar and their workman Shri Rabindra Kumar Mohapatra was referred to for adjudication is hereby published as in the Schedule below :

#### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 78 OF 2005

Dated the 31st March 2009

*Present :*

Shri M. R. Tripathy,  
Presiding Officer, Labour Court, Bhubaneswar.

*Between :*

The Management of Chilika Development ... First Party—Management Authority, Bhubaneswar.

*And*

Their Workman, ... Second Party—Workman  
Shri Rabindra Kumar Mohapatra.

*Appearances :*

For First Party—Management	..	Shri K. Bhatta
For Second Party—Workman himself	..	Shri R. K. Mohapatra

## AWARD

The Government of Orissa in exercise of powers conferred by sub-section (5) of Section 12, read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute between the parties to this Court for adjudication vide Order No. 9190—li/1(B)-102/2005-L.E., dated the 29th October 2005 of the Labour & Employment Department, Orissa, Bhubaneswar.

2. The Schedule of reference is as follows :

“Whether the action of the management of Chief Executive, Chilika Development Authority, Bhubaneswar in terminating the services of Shri Rabindra Kumar Mohapatra, workman with effect from the 1st April 2004 is legal and/or justified ? If not, what relief the workman Shri Mohapatra is entitled to ?”.

3. The case of the workman may be briefly stated as follows :

The workman Shri Rabindra Kumar Mohapatra was appointed as Scientific Assistant in Chilika Monitoring work by the management on the 16th April 1998 on a consolidated salary of Rs. 1, 440 per month. Subsequently his salary was enhanced to Rs. 3,000 per month and till the date of retrenchment i.e. till 31st March 2004 he was getting salary at the above rate. During the tenure of his service there was no stigma of any kind against him. He was never appointed in the Hydro Biological Monitoring Project but on the pretext that the said Project came to an end with effect from the 31st March 2004, his services were terminated with effect from the above date. He had worked continuously for more than 240 days every year but Section 25-F of the Industrial Disputes Act, 1947 was not complied at the time of termination of his service. Since he was terminated from service in an illegal manner, he raised an industrial dispute. Accordingly a conciliation proceeding was initiated by the Assistant Labour Officer, Bhubaneswar but conciliation failed and so the dispute was referred to this Court for adjudication.

4. The management in the written statement has submitted that to carry-out the monitoring work some persons were engaged on daily wage basis with effect from the 16th April 1998 and the workman of the present case was one of them. The said engagement was not against any sanctioned post and the workman was not appointed on regular basis following any recruitment procedure. He was last engaged in Hydro Biological Monitoring Project as per the office order No. 1009(11), dated the 20th June 2000 which was also communicated to him. As the aforesaid Project was likely to come to an end with effect from the 31st March 2004, the said fact was intimated to the workman vide office letter No. 2875, dated the 31st December 2003. Also an office order this effect was passed vide order No. 700(13), dated the 15th March 2004. As the aforesaid Project came to an end all the persons engaged in the Project including the workman was disengaged with effect from the 1st April 2004.

5. The following issues were framed.

### /ISSUES

- (i) "Whether the action of the management of Chief Executive, Chilika Development Authority, Bhubaneswar in terminating the services of Shri Rabindra Kumar Mohapatra, workman with effect from the 1st April 2004 is legal or justified ?
- (ii) If not, to what relief the workman Shir Mohapatra is entitled ?"

6. In order to substantiate his claim, the workman examined himself as W.W. 1 and filed a large number of documents. Similarly the management also examined a witness who is working as Scientific Officer, Chilika Development Authority as M.W. 1 and relied on three documents.

### FINDINGS

7. *Issue Nos. (i) and (ii)*—Both the issues are taken up together for the sake of convenience.

Admittedly Section 25-F of the Industrial Disputes Act, 1947 was not complied at the time of termination of services of the workman with effect from the 31st March 2004. According to the workman he had worked for more than 240 days continuously during the preceding 12 calendar months from the date of termination of his service. As such the management was duty bound to comply Section 25-F of the Industrial Disputes Act, 1947. Since Section 25-F of the Industrial Disputes Act, 1947 was not complied, so the termination of his service is illegal and he is entitled to be reinstated in service with back wages. On the other hand, according to the management the workman was engaged in a particular Project and as the Project came to an end on the 31st March 2004, he was automatically disengaged from the said date. Further according to the management the termination of service of the workman is not retrenchment as it is covered under the exception (bb) of Section 2(OO) of the Industrial Disputes Act, 1947.

8. The management has filed a copy of office order dated the 20th June 2000 marked as Ext. A. Memo No. 2875, dated the 31st December 2003 marked as Ext. B and office order No. 5, dated the 15th March 2004 marked as Ext. C. All these three documents were marked with objection because when the documents were exhibited by M.W. 1, the workman raised objection that the copies of those documents were never supplied to him by the management.

According to Ext. A the workman of the present case Shri G.P. Sahoo and Shri B.P. Behera who were earlier engaged in Monitoring activities of Chilika Lake were engaged in the Hydrobiological Monitoring Project with effect from the 1st June 2000. It is stated in Ext. A that the above engagement was purely temporary and coterminous with the completion of the Project. It was further stipulated therein that the above named three employees were not entitled to claim for regularisation or continuance in the post. After completion of the Project as and when the services were not required they will be terminated without prior notice and

assigning any reason. It is admitted by M.W. 1 that the workman was first appointed on the 16th April 1998 and he continued to work till the 31st March 2004. According to him while the workman was working on daily wage basis he was appointed in the post of Scientific Assistant in the Hydro Biological Monitoring Project with effect from the 20th June 2000 with the above terms and conditions. But he has not filed a scrap of paper to prove that the above fact was intimated to the workman or that the workman was aware of the fact that he was engaged in the Project with effect from the 20th June 2000 on temporary basis i.e. till the completion of the Project. According to the workman from the very beginning he was working under the direct control of the Chilika Development Authority. The management had never intimated him that he was engaged in the Hydrobiological Monitoring Project with effect from the 20th June 2000. So it was necessary for the management to file atleast some documentary proof to prove that the workman had the knowledge of his engagement in the aforesaid Project. During cross-examination M.W. 1 said that there are official papers to establish that the workman was working in the above Project but he has not filed any such official papers. He denied the fact that no letter was issued to the workman that he was engaged in the above Project with effect from the 1st June 2000 but he did not file any paper to prove that copy of Ext. A was served on the workman at any point of time. Regarding service of Exts. B and C he said that copy of those letters were sent to the workman and others by ordinary post. Ext. B was issued on the 31st December 2003 and Ext. C was issued on the 15th March 2004. Even it for the sake of argument it is believed that copy of Exts. B and C were sent to the workman by ordinary post it would atbest establish that the workman came to know about his engagement in the Hydrobiological Monitoring Project after the 31st December 2003. The management has not filed any material to prove that the workman had the knowledge of his engagement in a Project when the Project commenced. The workman has filed a large number of documents to prove that he was all along working under the direct control of Chilika Development Authority and that he was never engaged in any Project known as Hydrobiological Monitoring Project. Ext. 1 is a copy of letter written by Chief Executive of Chilika Development Authority, Bhubaneswar to the workman on the 4th July 1998 to search a building at Balugaon for the site office of Chilika Development Authority. Ext. 2 is a copy of sanction letter regarding conveyance allowance, food allowance, etc. in favour of the workman signed by the Chief Executive of the management. Ext. D is a copy of letter written by the Chief Executive to Padmashree (Dr.) P. Mohanty Hejmadi wherein the workman has been identified as Scientific Assistant of the management. Ext. 4 is a copy of letter of training programme of the workman signed by the Chief Executive of the management on the 18th December 2000 wherein also the workman has been identified as Scientific Assistant. Ext. 5 is a copy of certificate issued to the workman for participating in a training programme from the 19th December 2000 to the 22nd December 2000 signed by the Chief Engineer, Project Planning & Formulation, Orissa, Secha Sadan, Bhubaneswar. Ext. 7 is a copy of work programme of Scientific Assistants including the workman for the month of August, 2001 issued by M.W. 1. Ext. 9 is the copy of another letter issued by M.W. 1 wherein the workman was directed to appear before the Chief Executive of the management on the 4th June 2002 for review of his work. Ext. 10 is the copy of minutes of the work review meeting of Scientific Assistant held on the

4th June 2002 and Ext. 11 is the copy of a direction by the Chief Executive of the management to the workman on the 10th October 2002. Ext. 12 is the copy of another direction given by the same authority to the workman on the 5th April 2003 and Exts. 13 to 13/g and Exts. 14 to 14/b are the vouchers regarding receipt of salary of the workman. In none of the aforesaid documents there is a mention about the engagement of the workman in a Project named as Hydrobiological Monitoring Project. In all the vouchers marked as Exts. 13 series and Exts. 14 series it is noted that the workman has received an amount of Rs. 3,000 towards his consolidated salary for a particular month from the Chief Executive of the management.

9. As I have said earlier the management has not filed any paper to prove that the workman had the knowledge that from the 1st June 2000 he was engaged in a Project. Since the workman was under the employment of the management, the management could have served a copy of Ext. A on the workman. Had the management served a copy of Ext. A on the workman before the 1st June 2000 the workman would not have been in a position now to complain that he had no notice of the commencement of his employment in a Project which was short lived or that as per the terms and conditions of contract of employment the same will be liable to be terminated on the Project coming to an end. In this regard the workman has relied on a decision of the Apex Court in the case of S. M. Nilajkar & others V. Telecom, District Manager, Karnataka reported in 470-2003-LLR. In the said case at Paras. 13 and 14 it was held by their Lordships as follows :

“The termination of service of a workman engaged in a Scheme or Project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied :—

- (i) that the workman was employed in a Project or Scheme of temporary duration;
- (ii) the employment was on a contract, and not as a daily wager simplicitor, which provided *inter alia* that the employment shall come to an end on the expiry of the Scheme or Project ; and
- (iii) the employment came to an end simultaneously with the termination of the Scheme or Project and consistently with the terms of the contract;
- (iv) the workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment.

The engagement of a workman as a daily wager does not by itself amount to putting the workman on notice that he was being engaged in a Scheme or Project which was to last only for a particular length of time or up to the occurrence of some event, and therefore, the workman ought to know that his employment was short lived. The contract of employment consciously entered into by the workman with the employer would result in a notice to the workman on the date of the commencement of the employment itself that his employment was short-lived and as per the terms of the contract, the same was liable to termination on the expiry of the contract and the Scheme or Project coming to an end. The workman may not therefore complain that by the act of employer his employment was coming to an abrupt termination. To exclude the termination of a Schemen or Project employee from the definition of retrenchment

it is for the employer to prove the above said ingredients so as to attract the applicability of sub-clause (bb) abovesaid. In the case at hand the respondent employer has failed in alleging and proving the ingredients of sub-clause (bb), as stated herein above. All that has been proved is that the appellants were engaged as casual workers or daily wagers in a project. For want of proof attracting applicability of sub-clause (bb), it has been held that the termination of the services of the appellants amounted to retrenchment."

Since in the present case the management has failed to prove the ingredients of sub-clause (bb) of Section 2(oo) of the Industrial Disputes Act, 1947, therefore, I have no hesitation to say that the termination of service of the workman amounts to retrenchment. Once it is held that termination of service of the workman amounted to retrenchment, there will be no difficulty to say further that the management was duty bound to comply Section 25-F of the Industrial Disputes Act, 1947. Admittedly Section 25-F of the Industrial Disputes Act, 1947 was not complied on or before the date of retrenchment and therefore, the action of the management in terminating the services of the workman with effect from the 1st April 2004 is held as illegal and unjustified. The workman is entitled to be reinstated in service. According to the workman, he has not been gainfully employed anywhere after his service were termination. But fact remains that he has not rendered any service to the management after the date of his retrenchment. Therefore, in the aforesaid premises I feel it will be just and appropriate to award a lump sum amount of Rs. 10,000 in favour of the workman towards back wages. Both the issues are answered accordingly.

**10. Hence ordered :**

The action of the management of Chief Executive, Chilika Development Authority, Bhubaneswar in terminating the services of Shri Rabindra Kumar Mohapatra, workman with effect from the 1st April 2004 is illegal and unjustified. The workman Shri Mohapatra is entitled to be reinstated in service and to get a lump sum amount of Rs. 10,000 towards back wages. The management is directed to reinstate the workman in service immediately and to pay a sum of Rs. 10,000 towards back wages within one month from the date of publication of the Award in the official Gazette.

The reference is thus answered accordingly.

Dictated and corrected by me.

M. R. TRIPATHY

31-3-2009

Presiding Officer

Labour Court, Bhubaneswar.

M. R. TRIPATHY

31-3-2009

Presiding Officer

Labour Court, Bhubaneswar.

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By order of the Governor

K. C. BASKE

Under-Secretary to Government